IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL WRIT PETITION NO.843 OF 2007

Vijay Ramchandra Tayade .... Petitioner
Vs.
P.V.R. Reddy & Ors. .... Respondents

The Petitioner in person.

Shri Mandar Goswami for the Respondent No.1.

Shri V.B. Konde-Deshmukh, APP, for the Respondent No.2.

CORAM: R.M.S. KHANDEPARKAR &
Smt. V.K. TAHILRAMANI, JJ.

DATED: AUGUST 08, 2007

P.C:

1. Heard the petitioner in person and the learned Advocate for the respondent Nos.1 and 2 and also perused the petition and the annexures thereto.

2. By the present petition, the petitioner is challenging the order passed by the Commissioner of Customs dated 30-7-2006 imposing penalty on the petitioner in the adjudication proceedings under the provisions of the Customs Act, 1962. The petitioner also prays for liberty to take out defamation proceedings as well as criminal proceedings against the concerned authorities as also to order CBI enquiry in respect of the alleged misuse of official powers by the concerned authorities. All those prayers are in

relation to exercise of powers by the concerned authorities under the Customs Act, 1962 for the purpose of conducting adjudication proceedings against the petitioner.

3. The challenge to the adjudication proceedings is only on the ground that the petitioner has been acquitted in the criminal case filed in relation to the offence alleged to have been committed by the petitioner with reference to the facts which were disclosed in the complaint and which are also the basis for initiation of the adjudication proceedings. It is the contention of the petitioner that the petitioner having been once declared as not involved in the alleged offence, the authorities cannot again initiate adjudication proceedings on the same set of facts. The contention is thoroughly devoid of substance. It is well-settled law that proceedings in a criminal case arising out a set of facts are totally different from the proceedings in the nature of adjudication for the purpose of ascertaining the tax or duty liability and issue relating to evasion thereof as well as the penalty on that count under the revenue laws including the Customs Act, 1962. The law in that regard has been well-settled by a catena of decisions of this Court as well as of the Apex Court. It was held by the Apex Court in Civil Appeal No.1748 of 1999 {Standard Chartered Bank and others v. Directorate

of Enforcement and others}, decided on 24-2-2006 referring to its earlier decisions in Santram Paper Mills v. Collector of Central Excise, Ahmedabad, reported in (1998) 8 SCC 335 that the contention that since in adjudication proceedings no penalty was imposed and there was no finding of personal involvement of the appellant, the prosecution against such appellant should be quashed, cannot be accepted. It was clearly held that the two proceedings are independent of each other and finding in one proceedings cannot be construed as conclusive for other proceedings. Considering the said law laid down on the point in issue, there is absolutely no case made out for interference in the adjudication proceedings.

4. Besides, the order dated 30-7-2006 which is sought to be challenged by way of writ petition is undisputedly an appealable order and yet no appeal has been filed. The contention of the petitioner that the petitioner has no sufficient money to deposit with the Appellate Authority in order to enable him to file the appeal, that itself cannot be a justification to contend that the petitioner should be allowed to file petition instead of appeal. If the statutory provisions clearly empower the aggrieved party to file appeal against the order passed by the Commissioner of Customs in adjudication proceedings, and that there being

alternative efficacious remedy available to the aggrieved party, unless the same is exhausted, the party cannot directly approach the Court in writ jurisdiction. In case of financial difficulty, nothing prevents the petitioner from approaching the concerned Appellate Authority requesting such authority to waive the condition regarding the requirement of deposit or to make some concession in that regard. It is not the case of the petitioner that the petitioner had made any such efforts at any point of time.

5. The question of granting any liberty to initiate criminal proceedings against the authorities for the alleged illegal acts does not arise. We do not find any material placed before us which could reveal any illegal act having been committed by the concerned authorities. That apart, in case of any such illegality committed by the concerned authority, the petitioner has to take appropriate proceedings before the appropriate forum in accordance with the provisions of law in case the petitioner feels aggrieved by any such act on the part of the concerned authorities. The question of grant of such liberty in writ jurisdiction does not arise.

6. There is absolutely no case made out for giving any direction to the CBI for any enquiry in relation to any of the acts by the concerned officers and, therefore,

the request in that regard is also liable to be rejected.

7. For the reasons stated above, therefore, there is no case for interference in the petition. The petition fails and is hereby rejected.

(Smt.V.K.Tahilramani, J.) (R.M.S.Khandeparkar, J.)

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